

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

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|---|---|---------------------------|
| Austin Lee Tessiner, |) | C/A No. 6:18-cv-02708-DCC |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | ORDER |
| Lt. Robert Pagett, Head Nurse Tammy Gordon, |) | |
| Southern Health Partners, |) | |
| |) | |
| Defendants. |) | |
| _____ |) | |

This matter is before the Court on Plaintiff's Complaint alleging violations of his civil rights pursuant to 42 U.S.C. § 1983. ECF No. 1. On February 12, 2019, Defendants Gordon and Southern Health Partners filed a motion for summary judgment. ECF No. 33. Plaintiff failed to respond to the motion. On March 25, 2019, Plaintiff was given additional time to respond to the motion and was advised that this action was subject to dismissal if he failed to file a response. ECF No. 44. Plaintiff did not file a response to the motion. On February 26, 2019, Defendant Pagett filed a motion for summary judgment. ECF No. 39. Plaintiff failed to file a response. In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2), (D.S.C.), this matter was referred to United States Magistrate Judge Kevin F. McDonald for pre-trial proceedings and a Report and Recommendation ("Report"). On April 22, 2019, the Magistrate Judge issued a Report recommending that Defendants be dismissed for lack of prosecution and the motions for summary judgment be found as moot. ECF No. 47. The Magistrate Judge advised

Plaintiff of the procedures and requirements for filing objections to the Report and the serious consequences if he failed to do so. Plaintiff has filed no objections, and the time to do so has passed.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. See *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a de novo determination of any portion of the Report of the Magistrate Judge to which a specific objection is made. The Court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. See 28 U.S.C. § 636(b). The Court will review the Report only for clear error in the absence of an objection. See *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” (citation omitted)).

After considering the record in this case, the applicable law, and the Report of the Magistrate Judge, the Court finds no clear error and agrees with the Report’s recommendation. Accordingly, the Court adopts the Report by reference in this Order. Defendants are dismissed with prejudice pursuant to Federal Rule of Civil Procedure 41(b) because Plaintiff failed to prosecute this case against them. The motions for summary judgment [33, 39] are **FOUND as MOOT**.

IT IS SO ORDERED.

s/ Donald C. Coggins, Jr.
United States District Judge

May 30, 2019
Spartanburg, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.